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No. 451] NEW DELHI, FRIDAY, OCTOBER 31, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st October 1952

N^o 19/189/52-Elec.III.—WHEREAS the elections of Shri Narayan Sadoba Kajrolkar of 185, Suparibaug Road, Parel, Bombay and Shri Vithal Balkrishna Gandhi of 23, Dwarkadas Street, Khatau Building, Bombay, as members of the House of the People from the Bombay City-North constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), jointly by Shri Bhimrao Ramji Ambedkar of Rajgraha, Hindu Colony, Dadar, Bombay and Shri Asoka Ranjitram Mehta of No. 3, Dadyseth Street, Bombay;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT BOMBAY.

Election Petition No. 189 of 1952.

In the matter of the Representation of the Peoples Act, 1951

and

In the matter of the Election Petition presented thereunder by Dr. B. R. Ambedkar and another.

- (1) Bhimrao Ramji Ambedkar aged 60 of Bombay
Inhabitant residing at Rajgraha Hindu Colony,
Dadar, without the Fort of Bombay;
- (2) Asoka Ranjitram Mehta aged 39 of Bombay
Inhabitant residing at 3, Dadyseth Street near
Babulnath Temple without the Fort of Bombay.

.....Petitioners.

Versus

- (1) Shripad Amrit Dange, aged 52 of Bombay inhabitant residing at Shah Nivas, M.H. No. 3 Kohlnoor Road, Dadar without the Fort of Bombay;
- (2) Gopal Vinayak Deshmukh aged 68 of Bombay inhabitant residing at 39, Pedder Road without the Fort of Bombay;
- (3) Vithal Balkrishna Gandhi aged 55 of Bombay inhabitant residing at 23, Dwarkadas Street, Khatau Building within the Fort of Bombay;
- (4) Keshav Balkrishna Joshi aged 49 of Bombay inhabitant residing at P. 165, Shivaji Park Road No. 5, Mahim without the Fort of Bombay.
- (5) Narayan Sadoba Kajrolkar aged 56 of Bombay inhabitant residing at 185, Suparibaug Road, Parel without the Fort of Bombay;
- (6) Nilkanth Baburao Parulekar aged 57 of Bombay inhabitant residing at 157, Princess Street without the Fort of Bombay;
- (7) Dattatraya Ramchandra Gharpure aged 62 of Bombay inhabitant residing at Topiwalla Mansion, 385, Sandhurst Road without the Fort of Bombay;
- (8) Ramchandra Sadoba Kajrolkar aged 42 of Bombay inhabitant residing at 185, Suparibaug Road, Parel without the Fort of Bombay.
- (9) Shantaram Sawalaram Mirajkar aged 49 of Bombay inhabitant residing at Abdul Kadar Chambers M.H. No. P. L. 180, St. Xavier's Street, Bholwada Police Station Area without the Fort of Bombay.....

Respondents.

Coram: Sir N. J. Wadia, Chairman
of the Tribunal;
Mr. M. D. Lalkaka and
Mr. G. P. Murdeshwar;
Members.

Petitioner No. 1. in person

Mr. S. S. Kavlekar with Mr. M. P. Vyas and Mr. R. D. Bhandare instructed by Messrs. Kothare and Co. for Petitioner No. 2.

Mr. A. S. R. Chari with Mr. T. S. Hegde for Respondent No. 1.

Mr. V. R. Pandit for Respondent No. 2.

Mr. T. R. Kapadia for Respondents Nos. 3, 5 and 8.

Respondent No. 6 in person.

Respondents Nos. 4, 7 and 9 absent.

JUDGMENT

The two petitioners were candidates from the Bombay City North Constituency at the election to the House of the People held on the 3rd of January 1952.

The Constituency is a double member constituency, one of the two seats being reserved for the Scheduled Castes. The first petitioner Dr. Ambedkar and Respondents Nos. 5 and 8 were members of the Scheduled Castes and eligible for election to the reserved seat. The first petitioner was the nominee of the Scheduled Caste Federation, the second was a nominee of the Socialist Party. There was an alliance between the Scheduled Caste Federation and the Socialist Party at the time of the election, the agreement between the two parties being that votes were to be distributed between the two candidates in plural-member constituencies. As the result of the election the fifth respondent Mr. Kajrolkar secured the highest number of votes among the candidates of the Scheduled Castes and was declared

elected to the reserved seat, and the third respondent Mr. Gandhi was declared elected to the other seat. Respondents Nos. 7, 8 and 9 had withdrawn their candidatures before the election.

At the counting of votes the Returning Officer found that each of the candidates had secured a large number of double votes one of which the Returning Officer cancelled as null and void under section 63, sub-clause 2 of the Representation of the People Act 1951. The total number of such double votes cast for all the candidates was 74,333. Of these respondent No. 1 Mr. Dange secured as many as 39,165, and Respondent No. 2, Dr. Deshmukh 6,684; respondents Nos. 3 and 5, the two successful candidates received respectively 10,881 and 6,892 double votes; the petitioner No. 1, 2,921 and petitioner No. 2, 5,597.

It is the contention of the petitioners that the large number of double votes secured by respondents 1 and 2 was due to a deliberate propaganda carried on by the two respondents and their agents and supporters by which voters were told that if they wanted to get their candidates elected they should cast both their votes in favour of their candidate. As a part of this propaganda voters were deliberately told that there was nothing wrong in giving both their votes to the same candidate, and that they were not bound to give one of their votes to a Scheduled Caste candidate. It is contended by the petitioners that this propaganda to induce voters to give both their votes to respondents 1 and 2 amounts to a corrupt practice within the meaning of section 100, sub-clause (a) of the Representation of the People Act 1951 inasmuch as the respondents or their agents or persons acting with the connivance of the respondents or their agents exercised undue influence on the voters, and directly or indirectly interfered or attempted to interfere with the free exercise by voters of their electoral right. It has been held in England that to act corruptly in connection with elections is to do something which is contrary to the intention of an Act of Parliament. 1 O'M and H. 194.

Respondent No. 3 has contended in his written statement that the petition was bad for multifariousness, but this contention was not pressed by his learned advocate Mr. Kapadia, who said that he left the decision on the point to the Tribunal. The other respondents also did not press this contention. In our opinion, in an election petition the question of multifariousness cannot normally arise. All the parties to the election must be made parties to the petition.

It is not disputed that the handbill which is an annexure to the petition and which is signed by S. G. Patkar and Bapurao Jagtap, was on behalf of the Left Election Front. The first respondent Mr. Dange was a candidate put forward by the Left Election Front. The handbill which contains an appeal addressed to the voters of the Bombay North Constituency states that Comrade Dange the respondent No. 1 was contesting the general seat to the House of the People as a candidate of the Left Election Front, that he was certainly the most capable among the candidates contesting the election, and it asks the voters to give both their votes to him.

In the Copy of the newspaper, 'Yugantar' of the 29th of December 1951, 5 days before the date of the election, certain instructions to voters in Bombay were printed. These instructions told the voters that they would receive two ballot papers and that both of these should be dropped in the box of 'the engine'. 'The engine' was the election symbol of respondent No. 1. A handbill, annexure 'D' to the petition, was issued by respondent No. 1 Dange in which he said that all those who wanted to make the United Front of Leftists' nominees successful should give both their votes to 'the engine'.

Respondent No. 1 has made a feeble attempt to disown responsibility for the handbill, annexure 'B' and the instructions in the 'Yugantar' of the 29th of December 1951, annexure 'C'. From the evidence of Patkar and Jagtap, both of whom were representatives of the Left Election Front, Patkar being the Secretary, it is clear that they issued the handbill annexure 'B' on behalf of the Left Election Front and as part of its propaganda, and that Mr. Dange was the candidate of the Left Election Front. It has also been proved by the evidence of Deshpande, the editor of the 'Yugantar' that the instructions in the 'Yugantar' of the 29th December, 1951, annexure 'C' were printed by him in support of the candidature of Mr. Dange.

Respondent No. 2, Dr. Deshmukh issued a similar appeal to his followers in the press statement, annexure 'E' issued by him and printed in the newspaper 'Vividh Vritta' of the 30th of December 1951. Although in his affidavit he had denied responsibility for another article in the 'Vividh Vritta' of the same date, 30th of December 1951, annexure 'F', in which voters were told that they could drop both their votes in the box of a caste Hindu, ultimately in his address to the

Tribunal he stated that the late editor of the 'Vividh Vritta' was a friend of his and that he was prepared to take responsibility for what had been stated by the editor.

We have, therefore, no hesitation in holding that both the respondents 1 and 2 had openly advised their supporters to cast both their votes in favour of themselves.

We come now to the only important question arising in this petition whether these leaflets and publications, annexures 'B' and 'F', amounted to the corrupt practice of undue influence within the meaning of section 100, sub-clause (a) read with section 123(2) of the Representation of the People Act, 1951.

The contention of the 1st Petitioner, Dr. Ambedkar is that the handbills, annexures B and D, the instructions, annexure 'C', the Press statement, annexure 'E' and the Article in the 'Vividh Vritta', annexure 'F' published by Respondents 1 and 2 and their supporters, exercised such undue influence on the voters as to amount to a corrupt practice, within the meaning of section 123, sub-clause 2 of the Representation of the People Act, inasmuch as they advised the voters to do something which was against the law. We are concerned with section 123(2) of the Representation of the People Act, 1951, so far as the definition of 'undue influence' as applicable to section 100 is concerned. Undue influence is defined as any direct or indirect interference or attempt to interfere on the part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of any electoral right. The electoral right of a person or his right to vote is defined by section 79(d) of the Representation of the People Act as "the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election". What the Tribunal has to see is whether there has been any interference with the free exercise by any voter of his electoral right, viz., to vote or to refrain from voting at the election.

In the handbill, annexure B, which is signed by S. G. Patkar and Bapurao Jagtap as representatives of the Left Election Front which had put forward Mr. Dange as a candidate, voters were asked to give both their votes to Comrade Dange, on the ground that he was the most capable of all to lead the People's Front in the House of the People. Annexure C contained instructions to voters in Bombay published in the newspaper 'Yugantar', dated 29th December 1951. In these instructions voters were told to drop both their ballot papers in the box of the "Engine". The "Engine" was the Election symbol of Mr. Dange. In the Press statement, annexure E issued by Dr. Deshmukh, Respondent No. 2, it was stated that since the Socialists had entered into a pact with the Party of Dr. Ambedkar, the Scheduled Caste Federation, both the Parliamentary seats in this constituency might go to the two members of the Scheduled Castes, Dr. Ambedkar and Mr. Kajrolkar. In the Article in the 'Vividh Vritta', annexure F, which, in our opinion, must be taken as having been published with the connivance of Dr. Deshmukh and which supported his candidature, it was stated that it was not obligatory on the voters to cast one of their votes for a Scheduled Castes candidate, that both votes could be given to a Caste Hindu candidate, and that voting in this manner was not in any way illegal.

We hold that these leaflets and articles do not amount to undue influence; that is, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any others with the connivance of the candidate or his agent, with the free exercise of the electoral right; nor do they amount to an advice to the voters to break the law.

It is contended for the petitioner that under section 63 of the Representation of the People Act no elector in a plural member constituency can give more than one vote to any one candidate, and that, therefore, the deliberate advice on the part of Respondent No. 1 to the voters and his supporters to give both their votes to Respondent No. 1, amounted to an advice to do something which was illegal. The Press statement issued by Respondent No. 2 and the article in the 'Vividh Vritta', annexure F, which was printed in the copy of the 'Vividh Vritta' on the same date on which the Press statement, annexure E, was published in the 'Vividh Vritta', also in effect amount to an advice to the voters to give both their votes to Dr. Deshmukh, because, although he did not in so many words ask them to give both their votes to him, he warned them that as a result of the pact entered into between the members of the Scheduled Caste Federation and the Socialists, both the Parliamentary seats might go to the two members of the Scheduled Castes, Dr. Ambedkar and Mr. Kajrolkar.

We have, therefore, to consider whether in advising their followers to put both their ballot papers into the box of one candidate they were advising them to do something which was forbidden by the law, and which therefore, might amount to a corrupt practice according to English law. In our opinion, the

advice to voters to put both their ballot papers into the ballot box of the same candidate, Respondent No. 1 or Respondent No. 2, did not amount to an advice to them to break the law. Section 63(1) states that no elector shall give more than one vote to any one candidate, and sub-clause 2 of the same section provides that if an elector gives more than one vote to any one candidate, in contravention of the provisions of sub-section 1 then, at the counting of votes not more than one of the votes given by him to such candidate shall be taken into account, and all the other votes shall be rejected as void. If the Legislature had intended to treat the giving of more than one vote to the same candidate as an illegality, one would have expected it to penalise this conduct by directing that both the votes, so given to one candidate, should be rejected as void. Under Rule 25 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 it is also provided that not more than one ballot paper should be put by an elector into one ballot box. In our opinion, Rule 25 is a mere rule of procedure to provide for facility of counting and the operative provision is Section 63 which provides for the consequences which will follow the casting of more than one vote by a voter into the same box. Rule 31 Provides that if any elector after obtaining any ballot paper for the purpose of recording his vote, does not use the same, he shall return it to the Presiding Officer. The advice which Respondent No. 1 gave to his followers and which Respondent No. 2 suggested merely amounted to an advice to the voters to waste one of their votes. If instead of advising the voters to put both their ballot papers into the box of Respondent No. 1 or Respondent No. 2, they had advised the voters to waste one ballot paper by either returning it to the Presiding Officer or leaving it in the polling booth as provided by Rule 31, they would have done nothing wrong. In stead, they suggested another method of wasting the vote, viz., by throwing it into the same box. It cannot, in our opinion, be said that in giving this advice they were telling the voters to do something which was against the law or fraudulent. The Petitioner has relied on section 136 (1)(e), which provides that a person shall be guilty of an electoral offence if at any election he fraudulently puts into any ballot box any thing other than the ballot paper which he is authorised by law to put in. In the present case, there can be no such question, as the voter in putting in two ballot papers into the same box would be doing nothing fraudulent and the candidates in suggesting such a procedure were not asking them to do any such thing fraudulently.

The Act itself does not regard the giving of a second vote to the same candidate as amounting to a breach of the law; otherwise it would have provided a penalty for such a breach by declaring both the votes so cast as void. The fact that it has not done so in section 63 shows, in our opinion, clearly that the giving by a voter of both his votes to the same candidate would not amount to a breach of the law, or an attempt to defeat the law, except where such act was done fraudulently. Otherwise the act of the voter merely amounts to a deliberate waste of one vote, a contingency which the legislature itself provides for in Rule 31.

From the instructions to voters, annexure D published in the 'Yugantar' by Respondent No. 1 it is clear that he was perfectly well aware of the fact that in giving this advice he was advising his followers to waste one of their two votes, and that he had no intention by this advice to secure votes to which he was not entitled, or to advise his voters to break the law.

In our opinion, therefore, the advice given by Respondent No. 1 and his supporters to the voters to put both their ballot papers into the box of Respondent No. 1 and the Press statement issued by Respondent No. 2 and the article in the 'Vividh Vritta', annexure F, do not amount to an attempt to defeat the law.

The question still remains whether these handbills and publications issued by or with the connivance of Respondents Nos. 1 and 2 amounted to an attempt on their part to exercise undue influence on the voters, by directly or indirectly interfering or attempting to interfere with the free exercise by the voters of their electoral right. It is to be noted that Respondent No. 1 and Respondent No. 2 did not even insist in the handbills and articles published by them or on their behalf, that their followers should vote for them alone. Respondent No. 1 in the handbill printed and published by him, annexure D says in one place, "I do not oppose those voters who are not assuredly of my persuasion but who feel that they should cast one of their votes for me and the other for a candidate for the reserved seat". Again, at the end of this handbill he says: "All those who want to make our United Front of Leftists nomination successful should give both of their votes to the 'Engine'". But I do not take exception to those who, after casting one of their votes for me, want to utilise their second votes elsewhere". Similarly, Respondent No. 2 in his Press statement, annexure E, after pointing out to his voters that there was a possibility that both the seats might go to the Scheduled Caste candidates, says "the voter, of course, should necessarily

be guided by what he considers to be proper. If I were asked about how to get out of this trap I would say nothing else than this that the voter should cast his votes as he himself wants to". We do not think that in giving the advice, which they did to their voters, Respondents 1 and 2 can be said to have in any way exercised undue influence or directly or indirectly interfered or attempted to interfere with the free exercise by the voters of their electoral right.

It has been argued by Petitioner No. 1 that Respondents Nos. 1 and 2 and their supporters did not explain to the voters why they should give both votes to the same candidate; that voters were deliberately kept in the dark and that they did not know and were not informed that by giving both votes to Respondent 1 or Respondent 2 they would waste one vote. We think there is no substance in this contention. Respondent No. 1 in the hand bill, annexure D issued by him makes no secret of the fact that by following his advice the voters would waste one of their votes. He says 'some critics are unnecessarily creating a furore over this advice of mine' and then he goes on to say 'waste of one of the two votes does not in any way impair democracy'.

The 1st Petitioner, Dr. Ambedkar, has argued that both the Respondents Nos. 1 and 2 had made a systematic appeal to their followers to vote or refrain from voting on grounds of caste. We do not think that this criticism can legitimately be levelled against the appeals issued by the two respondents and their supporters. This being a constituency in which one of the seats was reserved for the Scheduled Castes it was permissible to the Respondents to point out that in certain contingencies the election might result in both the seats going to the Scheduled Castes. In pointing this out, it seems to us that the emphasis was not on the undesirability of both the seats going to the Scheduled Castes, but on the possibility that as a result of the reservation, voters other than Scheduled Caste voters might go unrepresented. It may be said that even this attempt was an undesirable one; but it is a consequence which—must necessarily follow in an election, in which there is a reserved seat.

We hold that the Petitioners have failed to prove that the election was void by reason of any corrupt practice within the meaning of section 100(1)(a) of the Representation of the People Act, and that the Petition must, therefore, be dismissed with costs in favour of the contesting Respondents 1, 2, 3 and 5. The Respondents will get their costs at the rate of Rs. 300. Respondents 1 and 2 will get one set of costs each and Respondents 3 and 5 one set between them.

(Sd.) N. J. WADIA.

(Sd.) M. D. LALKARA.

(Sd.) G. P. MURDESHWAR.

17th October 1952

17-10-52

P. S. SUBRAMANIAN,
Officer on Special Duty.